

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 19, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No: 09HD-033  
Hawaii

Amend Prior Board Action of September 25, 2009, Item D-7, Grant of Perpetual, Non-Exclusive Easement to Office des postes et télécommunications de Polynésie française for Submarine Cable Purposes, Immediate Construction Right-of-Entry, Kawaihae 2nd, Waimea, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-2-02:08 por. and submerged land seaward of same.

BACKGROUND:

At its meeting of September 25, 2009, Item D-7, the Board of Land and Natural Resources approved the request of Applicant Office des postes et télécommunications de Polynésie française (Applicant) for a submarine cable easement affecting the above-referenced lands. See Exhibit A attached.

REMARKS:

In the further processing of Applicant's request, staff realized that the Character of Use for the easement, set forth at page 2 of staff's September 25, 2009 submittal, incorrectly includes an access component. The Character of Use provision states:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

The Character of Use provision should have stated:

Right, privilege and authority to develop, construct, reconstruct, use, maintain and repair fiber optic submarine cable system over, under and across State-owned land.

RECOMMENDATION: That the Board:


1. Amend its prior Board action of September 25, 2009, under agenda item D-7 by replacing the Character of Use provision at page 2 of staff's submittal with the following:

CHARACTER OF USE:

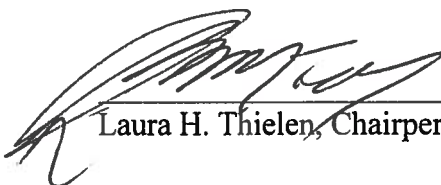

Right, privilege and authority to develop, construct, reconstruct, use, maintain and repair fiber optic submarine cable system over, under and across State-owned land.

2. All terms and conditions listed in its September 25, 2009 approval to remain the same.

Respectfully Submitted,

  
for Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Laura H. Thielen, Chairperson 

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 25, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 09HD-033

Hawaii

Grant of Perpetual, Non-Exclusive Easement to Office des postes et télécommunications de Polynésie française for Submarine Cable Purposes, Immediate Construction Right-of-Entry, Kawaihae 2nd, Waimea, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-2-02:08 por. and submerged land seaward of same.

APPLICANT:

Office des postes et télécommunications de Polynésie française, a French Polynesia corporation, whose mailing address is P.O. Box 605, Papeete, 96713, Tahiti, French Polynesia.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kawaihae 2nd situated at Waimea, South Kohala, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 6-2-02:08 and submerged lands seaward of same, as shown on the attached map labeled Exhibit A.

TMK/ ZONING/ AREA/ ENCUMBRANCE:

TMK	ZONE		PARCEL AREA	EASEMENT AREA	ENCUMBRANCE
	LUC	CZO			
3 <sup>rd</sup> / 6-2-02:08	Conser- vation	Open; SMA	13.4 ac	7.922 ac*	EO 729 to the County of Hawaii for Spencer Beach Park; Land Office Deed (LOD) S-28,465 to Verizon Hawaii, Inc. for submarine cable easement; LOD

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

September 25, 2009

**EXHIBIT A**

TMK	ZONE		PARCEL AREA	EASEMENT AREA	ENCUMBRANCE
	LUC	CZO			
					S-28,546 (pending) to Verizon Hawaii, Inc. statewide communication cable easement; LOD S-28,567 (pending) to Pacific Lightnet, Inc. and Time Warner Tel. for statewide submarine cable easements; LOD S-28,766 to National Park Service for access and utility easement
Submerged lands seaward of TMK 3 <sup>rd</sup> / 6-2-02:08	Conser- vation	NA	NA	7.922 ac*	LOD S-28,465, LOD S-28,546, LOD S-28,567 as above

\*The easement area of approximately 7.992 acres includes both the submerged land and fastland portions of the easement corridor.

**TRUST LAND STATUS:**

PARCEL	HAWAII ADMISSION ACT SECTION	DHHL 30% ENTITLEMENT
3 <sup>rd</sup> / 6-2-02:08	5(a)	No
Submerged lands seaward of TMK 3 <sup>rd</sup> / 6-2-02:08	5(b)	No

**CURRENT USE STATUS:**

TMK 3<sup>rd</sup>/ 6-2-02:08 is presently used by the County of Hawaii for the Spencer Beach Park under Executive Order No. 729.

**CHARACTER OF USE:**

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

**COMMENCEMENT DATE:**

To be determined by the Chairperson.

**CONSIDERATION:**

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 8, 2009 with a finding of no significant impact (FONSI).

At its meeting of July 22, 2009, Item K-6, the Board approved the issuance of Conservation District Use Permit No. HA-3499 to Applicant for the project.

**DCCA VERIFICATION:**

Applicant advised staff that Applicant is not required to register with the Department of Commerce and Consumer Affairs (DCCA) because Applicant will not be transacting business within the State. Applicant cites Hawaii Revised Statutes Section 414-431(b)(11), which provides that the activity of interstate commerce does not constitute "transacting business" within the meaning of the statute. Applicant explains that its activity in Hawaii will be limited to interstate commerce, including foreign commerce. Staff consulted the Department of the Attorney General who was satisfied with Applicant's position, but added that should Applicant's operations expand to providing services in the State in the future, Applicant will need to comply with the DCCA registration requirements and other applicable laws.

**APPLICANT REQUIREMENTS:**

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Comply with the conditions of Conservation District Use Permit HA-3499; and
- 4) Comply with applicable County of Hawaii Special Management Area requirements.

**REMARKS:**

Applicant is a French Polynesia corporation fully owned by the Territory of French Polynesia. Applicant has contracted with Alcatel-Lucent Submarine Networks to supply and install one submarine fiber optic cable that will provide a connection between Applicant's infrastructure on the Island of Tahiti, French Polynesia, and the existing cable

station and onshore telecommunications infrastructure at Spencer Beach, Hawaii. The proposed submarine cable system, the Honotua Cable System, will establish the first submarine telecommunications system linking Hawaii with Tahiti and Applicant's domestic system. The system will also interconnect in Hawaii with trans-Pacific cables extending from the West Coast of the United States to Japan, China and other countries of the Western Pacific Rim.

The project design aims to minimize new construction by focusing on the use of spare capacity within the existing infrastructure currently available at Spencer Beach Park. This site is one of the major international submarine cable landings in Hawaii. As noted above, the subject land is already encumbered by one executed grant of easement for submarine cable, and two additional easements are pending.

Project activity will consist of installation of the submarine cable, landing the cable at the beach where the existing beach manhole is located, and connection to the cable station via the existing beach manhole and ducts. The landing site for the cable will be concealed. The cable will not impact the public's use of the beach (except temporarily during construction) or pose a threat to public safety. Exhibit B attached shows the route of Applicant's proposed cable landing in yellow, in comparison with existing cable routes shown in red.

Applicant is requesting an immediate construction right-of-entry to allow the cable installation work to proceed before the preparation of the survey map for the easement corridor. Due to the nature of submarine cable laying, the exact location of the cable under water cannot be determined until the cable is actually placed on the seabed. The maps attached as Exhibits B and C show the general area of cable installation and landing.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

In the environmental assessment and CDUA processes, Applicant requested comments on the project from various State, County and Federal agencies. The comments and Applicant's responses thereto are covered in detail in the Final Environmental Assessment for the project.

The County of Hawaii, Department of Parks and Recreation, has provided a written concurrence dated May 29, 2009 to the Applicant's request. See Exhibit D attached.

**RECOMMENDATION:** That the Board:

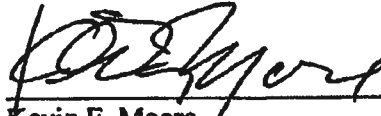
1. Subject to the Applicant fulfilling all of the Applicant requirements listed above,

authorize the issuance of a perpetual non-exclusive easement to Office des postes et télécommunications de Polynésie française covering the subject area for submarine cable purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
  - B. The easement shall not be assignable without the prior written consent of the Board of Land and Natural Resources;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Grant an immediate construction right-of-entry to Office des postes et télécommunications de Polynésie française, its consultants, contractors, and/or persons acting for or on its behalf, onto the submerged lands portion of the subject area, as generally indicated in yellow on Exhibits B and C attached, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current construction right-of-entry form, as may be amended from time to time;
  - B. This right-of-entry is effective upon Land Board approval and shall continue until the grant of easement is finalized and executed; and
  - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.
3. Consent to the issuance of an immediate construction right-of-entry by the County of Hawaii to Office des postes et télécommunications de Polynésie française, its consultants, contractors, and/or persons acting for or on its behalf, onto the fastland portion of Tax Map Key: 3<sup>rd</sup>/ 6-2-02:08 as indicated in yellow on the map attached as Exhibit B, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

- A. Such terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:

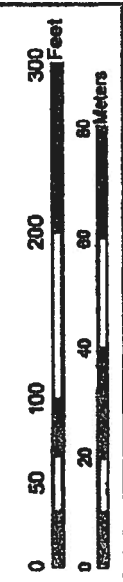
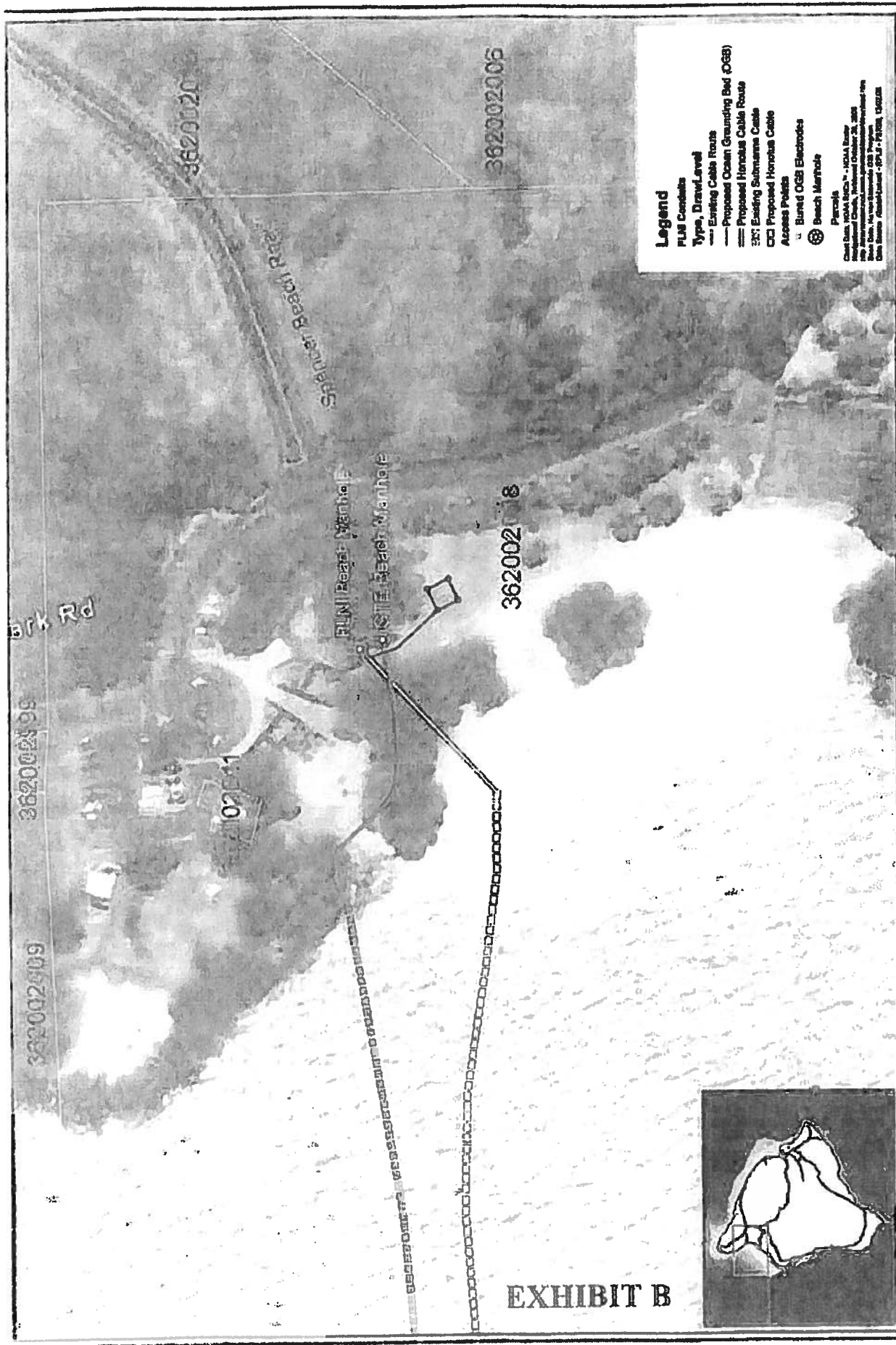


Laura H. Thielen, Chairperson

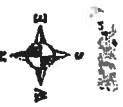






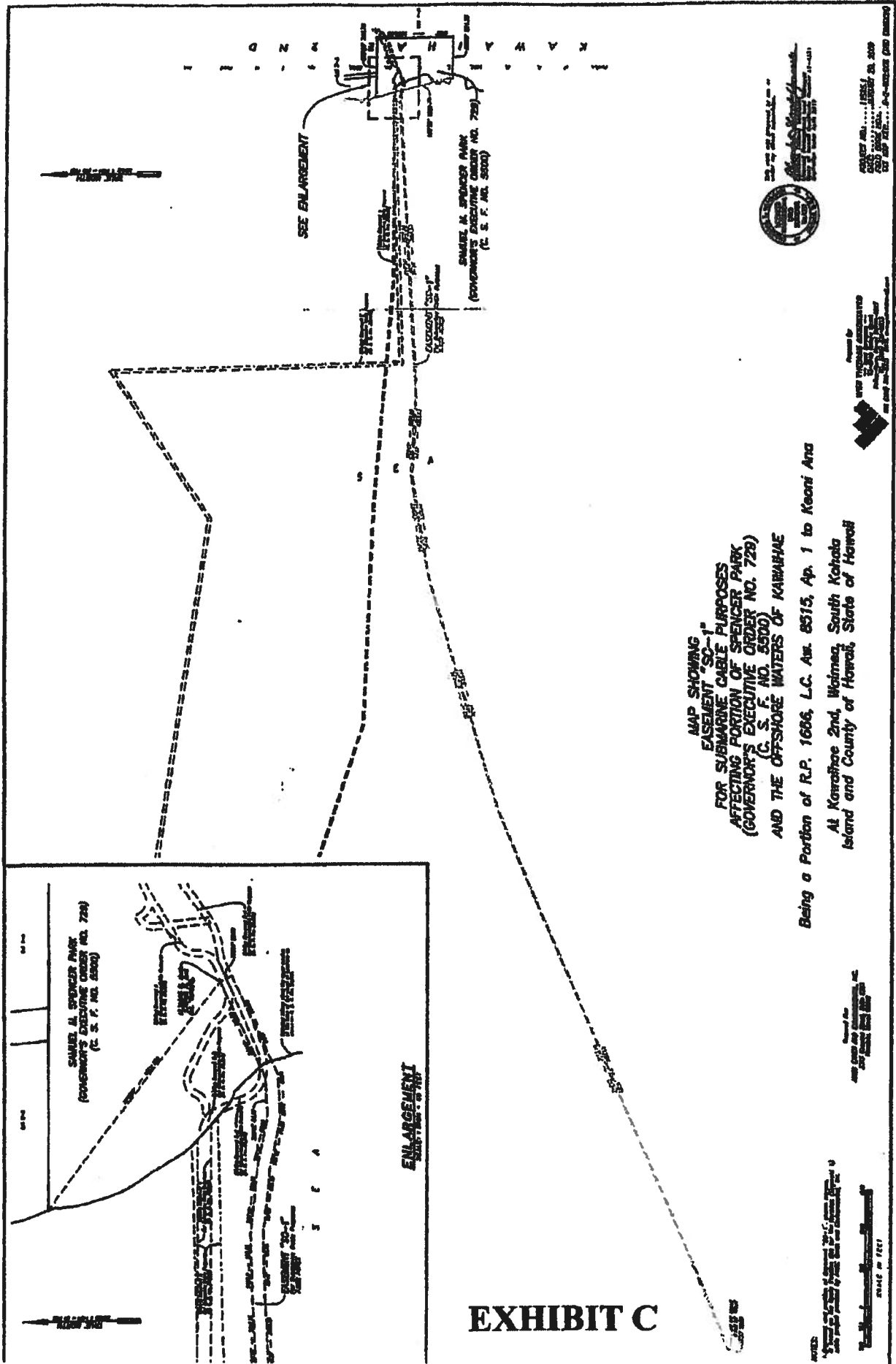


**Figure 1**  
**TMK Map and Nearshore Cable Landing**



Easement Application  
Honouua Cable Project  
Spencer Beach, Hawaii  
Hawaiian Easement Application, TMK-000 000 000 000

**EXHIBIT B**



William P. Kenoi  
Mayor



Robert A. Fitzgerald  
Director

Clayton S. Honma  
Deputy Director

**County of Hawai'i**

**DEPARTMENT OF PARKS AND RECREATION**

101 Pauahi Street, Suite 6 • Hilo, Hawai'i 96720  
(808) 961-8311 • Fax (808) 961-8411

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RECEIVED  
DIVISION  
HAWAII

May 29, 2009

Kevin E. Moore  
Hawaii District Land Agent  
DLNR Land Division  
75 Aupuni St., Rm. 204  
Hilo, HI 96720

RE: **Request for Perpetual, Non-Exclusive Submarine Cable Easement Covering State-Owned Submerged Lands Offshore of Kawaihae**  
**TMK (3) 6-2-002:008, Kawaihae 2<sup>nd</sup>, Waimea, South Kohala, Hawai'i**  
**Ref. No. 09HD-033**

Dear Mr. Moore,

The County of Hawai'i is the owner of record of land which is designated by TMK (3) 6-2-002:008 (Spencer Beach Park), pursuant to Executive Order No. 729 for Spencer Beach Park.

We hereby concur with the request from Office des postes et télécommunications de Polynésie française (OPT) to obtain a perpetual easement from the Board of Land and Natural Resources over, under and across the parcel for fiber optic cable purposes.

Should you have any questions or concerns, please contact me at 808-961-8311.

Sincerely,

*Robert A. Fitzgerald*

Robert A. Fitzgerald  
Director

c. Denise Toombs, ERM  
Anna Mallon, AMEC